



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1307 of 2022
Date of filing:	30.05.2022
Date of first hearing:	02.08.2022
Date of decision:	01.08.2023

1. Shri Sanjeev Chatrath,
S/o Sh. Piara Lal Chatrath,
R/o House No. 2184, Sector-9,
Faridabad- 121006

....COMPLAINANT(S)

2. Mrs. Sanjana Chatrath W/o Shri Sanjeev Chatrath
through attorney holder
Shri Sanjeev Chatrath,
S/o Sh. Piara Lal Chatrath,
R/o House No. 2184, Sector-9,
Faridabad- 121006

VERSUS

BPTP Limited
Plot no. 28, ECE House KG Marg
Connaught Circus, New Delhi- 110001

....RESPONDENT(S)

CORAM: **Dr. Geeta Rathee Singh** **Member**
 Nadim Akhtar **Member**

Hearing: 3rd

Present: - Mr. Sanjeev Chatrath, Complainant through VC.

 Mr. Hemant Saini, Counsel for the respondent.

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed on 30.05.2023 by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	Park-81, BPTP Parklands, Sector 81, Faridabad.
2.	RERA registered/not registered	Not registered
3.	Unit no.	VL-1-19-FF



4.	Unit area	1402 square foot (Super Area)
5.	Date of booking	Booked by original allottee – Shivani Wadhwa on 22.02.2010. Purchased by subsequent allottee-Satya Deo Sharma on 30.03.2010 and nomination in favor of subsequent allottee on 08.04.2010 Thereafter purchased by subsequent allottee/complainants vide agreement to sell dated 28.09.2012.
6.	Date of provisional allotment	16.03.2010
7.	Date of builder buyer agreement with complainant	07.11.2012
8.	Due date of offer of possession- As per clause 5.1 of BBA, 36+6 months from date of execution of BBA or from date of sanction of building plans whichever is later.	07.05.2016 or 20.07.2017
9.	Basic sale price	₹ 45,47,759/-
10.	Amount paid by complainant	₹ 50,10,368.04/-
11.	Offer of possession	22.07.2020

B. FACTS OF THE COMPLAINT

3. Facts of complaint are that Mrs. Shivani Wadhwa, original allottee approached the respondent through the broker Desires(The Property Hub) for the booking of the unit in the project-“Park-81”,

Satya

situated in the BPTP Parkland sector-81, Faridabad which is a part of the larger colony being developed by the respondent at Faridabad. Vide letter dated 16.03.2010, original allottee received an allotment of residential floor no. VL-1-19-FF, tentatively measuring 1402 square foot.

4. That the original allottee, Mrs. Shivani Wadhwa transferred the allotment of booked unit to Mr. Satya Deo Sharma (subsequent allottee) on 30.03.2010. Further, allotment rights of unit were purchased by complainant and his co-applicant Mrs. Sanjana Chatrath on 28.09.2012.
5. Builder buyer agreement was executed on 07.11.2012 between the parties. As per clause 5.1, the respondent was under obligation to deliver possession within a period of 36 months from the date of sanction of building plan or execution of the agreement whichever is later along with grace period of 180 days. The respondent has not been able to deliver the possession of the unit within the stipulated time period in terms and conditions of the said agreement. Due to failure on part of respondent, complainants wish to withdraw from the project.
6. It has been submitted that complainants have already paid an amount of ₹ 50,10,368.04/- against basic sale price of ₹ 45,47,759/-, however the unit allotted to them is still under construction. The current status of the project is not suitable for possession as there is no connectivity

of any road for reaching the floors and the internal road has not been constructed. Moreover, the supporting infrastructures like street lights and parks do not exist as of now. As such the project has been in the raw phase of construction since year 2012 and no construction activity is going any further. Therefore, complainants are left with no other option but to approach this Authority. Hence the present complaint has been filed.

C. RELIEF SOUGHT

7. The complainants in this complaint have sought following reliefs:
- (i) To return the entire amount with interest and pay the compensation as per prevailing Rule 15 of HRERA Rules, 2017, i.e., SBI MCLR+ 2% RERA Regulations.
 - (ii) The respondent pays the entire amount with interest calculated as per Rule 15 of HRERA Rules, 2017 i.e. SBI MCLR+ 2% RERA Regulations w.e.f 25.09.2009.
 - (iii) To pay the complainants ₹ 8,00,000/- as compensation towards mental agony, harassment and deficiency of service caused to the complainant and ₹ 50,000/- towards the cost of legal expense.
8. During the course of arguments addressed by the parties on 29.03.2023, it had been brought to notice of the Authority that co-owner Sanjana Chatrath has not been impleaded as complainant no. 2 in the complaint.

S. Satish

Sanjana Chatrath, co-owner is a necessary party and she is required to be impleaded as complainant no 2. In these circumstances, disposal order had been deferred and the complainants were directed to submit appropriate application for impleadment of Sanjana Chatrath as complainant no. 2 being co-owner of booked unit in this complaint.

9. Pursuant to the same, Ms. Sanjana Chathrath, co owner of the unit has filed a General Power of Attorney dated 27.04.2023 to nominate, constitute and appoint her husband, i.e, Mr. Sanjeev Chatrath, complainant, to act and to do acts, deeds and things and name on her behalf in respect of the flat in question, i.e, Plot no. VL1-19, Park-81, Sector-81, Faridabad, Haryana. A copy of the same has been supplied to the office of the respondent company. In view of the GPA filed by Ms. Sanjana Chatrath, the technical error observed during the course of hearing dated 29.03.2023 has hence been removed. Accordingly, present disposal order is being passed on the basis of arguments advanced by both the parties.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondents filed detailed reply on 20.12.2022 pleading therein:

10. That, flat buyer agreement with complainants was executed much prior coming into force of Real Estate (Regulation and Development) Act, 2016. (RERA Act in brief). Therefore, agreement executed prior



to coming into force of the Act or prior to registration of project with HRERA cannot be reopened.

11. Respondent has admitted the nomination and execution of BBA in favour of complainant. It has been submitted that respondent in line with the terms of the BBA subject to force majeure (clause 14) proposed to handover of the possession of the unit within a period of 36 months from the date of sanctioning of building plans or execution of BBA, whichever is later alongwith further grace period of 180 days. Since the BBA was executed on 07.11.2012 and building plans were sanctioned on 20.01.2014, therefore, the due date of possession arrives out to 20.07.2017.
12. That, construction of the project in question has been marred by the circumstances beyond the control of the respondents such as ban on construction by Hon'ble Supreme Court of India in the matter titled as M.C.Mehta vs Union of India, ban on construction by the principal Bench of NGT in Vardhman Kaushik vs Union of India , ban by Environment Pollution Prevention and Control Authority due to severe air pollution in Delhi-NCR and COVID-19.
13. That, construction of the unit in question was going on in full swing and the respondents were confident to handover possession of the unit.


R. K. Ramesh

However, due to the sudden outbreak of COVID-19 all the activities including construction of the project across the country came to halt.

14. That, possession of the unit was offered to complainants on 22.07.2020 alongwith demand of ₹ 19,90,162/- and, it is the complainants who are at fault by not coming forward to accept it.
15. Complainants are a defaulter in terms of Section 19 of the RERA Act,2016 as they on numerous occasions have defaulted in remitting timely payments qua the lawful demands raised by the respondent including the demand raised at the time of offer of possession dated 22.07.2020 constrained by which the respondent on 14.09.2020, 31.10.2020, 11.01.2021, 15.03.2021, 14.01.2022, 14.02.2022 and 08.03.2022 issued various reminder letters including recovery letter and last and final opportunity letter but all went in vain.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS

16. During oral arguments, Mr. Sanjeev Chatrath complainant apprised the Authority that construction of the unit is not complete and in fact construction is not going on for the last 2-3 years. He further insisted upon refund of paid amount with interest stating that respondent is not in a position to handover possession of the booked unit. In rebuttal, learned counsel for the respondents' reiterated arguments as were submitted in written statement. Learned counsel for respondent further



made an offer of refund of paid amount with 9 percent per annum interest to the complainants but said offer has been refused by the complainants.

F. JURISDICTION OF THE AUTHORITY

17. Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E.1 Territorial Jurisdiction

As per notification no. 1 /92/2017/ITCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be entire Haryana except Gurugram District for all purpose with offices situated in Panchkula. In the present case the project in question is situated within the planning area Faridabad district. Therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

E.2 Subject Matter Jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case



may be, to the allottees or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act of 2016 quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by learned Adjudicating Officer if pursued by the complainant at a later stage.

G. ISSUES FOR ADJUDICATION

18. Whether the complainants are entitled to refund of amount deposited by him along with interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

19. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:

(i) Respondent was under obligation to deliver possession within the time stipulated in clause 5.1 of builder buyer agreement dated 07.11.2012 but possession was offered to complainant on 22.07.2020 that too without any information with respect to receipt of occupation certificate. As per version



of complainants, the construction of the unit has not been completed till date, in fact the construction activity has not been going at site for the last 2-3 years. In support, they have placed on record the report dated 18.07.2022 of local commissioner received in complaint no. 1221/2021 titled as Ajay Kumar Bahri & Bharti Bahri vs BPTP Ltd wherein the actual status of unit no. VL-1-22-FF has been provided. It has been submitted in said report that Block VL consists of two set of floors, i.e., VL1 and VL2 linked by a common passage. The common passage was not connected to any road of the campus making the pocket inaccessible by any motor vehicle. It has been further stated that no construction activity was going on at the time of visit and it also seemed that no construction activity had taken place in recent past and no unit in the pocket VL was inhabited by any one due to incomplete status of the flats'.

(ii) Moreover, no specific time period has been committed by respondent for its completion. In these circumstances where the flat buyer agreement was signed way back in the year 2012 and the pocket VL in which complainants unit is located is not complete nor likely to be completed within foreseeable future and extraordinary delay has already been caused from the due date of offer of possession, the complainants would be entitled



to relief of refund as they cannot be forced to wait for completion of project for an endless period of time.

(iii) Arguments in respect of force majeure conditions put forth by ld. counsel for respondent cannot be accepted as there is nothing on record to justify the unreasonable delay due to which the construction works got delayed. Nothing extraordinary have taken place between the date of executing the flat buyer agreement and due date of offer of possession, and for that matter even till now has been shown to have happened.

(iv) One of the averments of respondent is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act, 2016. Accordingly, respondent has argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and same cannot be examined under the provisions of RERA Act. In this regard Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016

A handwritten signature in blue ink, appearing to read 'J. Kothari', is written over a horizontal line.

coming into force the terms of agreement are not re-written , the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as Madhu Sareen v/s BPTP Ltd. Relevant part of the order is being reproduced below:

“The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller.”

Further, as per recent judgement of Hon’ble Supreme court in Newtech Promoters and Developers Pvt. Ltd it has already been held that the projects in which completion



certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act,2016 shall be applicable to such real estate projects, therefore this Authority has complete jurisdiction to entertain the captioned complaint. In the instant case, however, relief of refund has been sought. The refund in this case is admissible because respondent has failed to complete the real estate project and handover the possession of the same within the time stipulated in the agreement for sale. As on date, the complainants are aggrieved persons who have not been handed over possession of the flat as per agreement of sale. The cause of action, i.e., handing over of possession still persists even after the RERA Act,2016 coming into force. This is a case of breach of contract by the respondent. In the case of breach of contract, argument that provisions of RERA Act, 2016 will not apply to the agreements executed prior to coming into force of the Act cannot be applied at all. Provisions of the agreement are to be considered if the agreement was to be acted upon. Here is a case of breach of contract, therefore, equities have to be settled so as to compensate a person who is a sufferer on account of breach of

A handwritten signature in blue ink, appearing to read "J. K. Patil", is written over a horizontal blue line.

contract. The general law of the land will regulate such situation and not provision of the agreement.

(v) Factual position reveals that respondent is not in a position to deliver possession of booked unit. Complainants have paid an amount of ₹ 50,10,368.04/- to the respondent, out of which last payment was made in February, 2020 and since then complainants are waiting for possession of unit. Complainants/allottee in exercise of their right under the provisions of this Act have demanded refund of the amount paid by them. In this regard section 18(1) provides that in case the promoter fails to hand over the possession of the apartment, plot or building, he shall be liable on demand to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest, at such rate as may be prescribed. Furthermore, respondent in his reply has not placed on record any document to show whether occupation certificate has been applied or not and if yes then what is the status of the occupation certificate application. In these circumstances it is presumed that respondent has not received occupation certificate till date.

(vi) Further, Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of

A handwritten signature in blue ink, appearing to read "Rattree", with a long horizontal stroke underneath it.

Uttar Pradesh and others ” has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

“25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.

20. This project is already delayed by several years. It is still not complete and admittedly respondent is not in a position to complete the project in foreseeable future, therefore, Authority finds it to be fit case for allowing



refund in favor of complainants. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15: “Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub.sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of india highest marginal cost of lending rate +2%:


J. K. Ramesh

Provided that in case the State Bank of India marginal cost of lending rate (NCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public".."

21. The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

22. Consequently, as per website of the state Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short MCLR) as on date i.e. 01.08.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.75%.

23. Accordingly, respondent will be liable to pay the complainants interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainants the paid amount along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.75% (8.75% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 10.75% till the date of



this order and said amount works out to ₹ 51,65,037/-as per detail given in the table below:

Sr. No.	Principal Amount (in ₹)	Date of payment	Interest Accrued till 01.08.2023 (in₹)
1.	300000	2009-09-25	446994
1.	150000	2010-01-05	218991
2.	8000	2010-03-30	11482
3.	230000	2010-03-31	330028
4.	140000	2010-03-31	200887
5.	591000	2012-05-02	715219
6.	60287	2012-05-02	72958
7.	362000	2012-05-02	438087
8.	92523	2012-05-31	111180
9.	174711	2012-06-04	209735
10.	433191	2013-10-21	455729
11.	500852.52	2013-12-16	518650
12	756348.12	2014-03-25	761171
13	460850.43	2014-04-21	460124
14	40713	2016-11-15	29389
15	470842.12	2020-02-18	174866
16	57476.03	2022-01-15	9547
Total	48,28,794.22/-		51.65,037/-

Complainants have availed timely payment discount amounting to ₹ 1,81,573.75. Said amount will be deducted while granting refund to the complainants. Section 18 of RERA Act, 2016 provides for return of amount



to complainants on demand in case promoter fails to complete or unable to give possession of apartment, building or plot in accordance with terms of agreement for sale the amount received by him in respect of said apartment, building or plot. Component of timely payment discount has not actually been paid by the complainants rather it is a discount given by the respondent for timely payment of due instalments by the complainants. Said discount cannot be said to have been paid by the complainants and is liable to be deducted while granting refund.

Further, complainants claim to have been paid an amount of ₹ 50,10,368.04 as per the statement of accounts dated 15.01.2022 but he has annexed receipts amounting to ₹ 49,52,892.01 only. Remaining amount of ₹. 57,476.03/- will be taken from the date of statement of accounts dated 15.01.2022. Interest on Rs. (49,52,892.01- 1,81,573.75= 47,71,318.26) is calculated from the actual date of payments and on amount of ₹. 57,476.03/-, interest is being calculated from the date of statement of accounts i.e., 15.01.2022.

24. The complainants are also seeking directions to respondent to pay the complainants ₹ 8,00,000/- as compensation towards mental agony, harassment and deficiency of service caused to the complainants and ₹ 50,000/- towards the cost of legal expense. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*"



(supra), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

I. DIRECTIONS OF THE AUTHORITY

25. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to refund the entire amount of ₹ 99,93,831.22/- to the complainants in equal share.
- (ii) A period of 90 days is given to the respondents to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.


A handwritten signature in blue ink, appearing to read 'J. K. Kataria', is written over a horizontal blue line.

26. **Disposed of.** File be consigned to record room after uploading order on the website of the Authority.


.....
NADIM AKHTAR
[MEMBER]


.....
DR. GEETA RATHEE SINGH
[MEMBER]